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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF WASHINGTON**

13 JUSTIN BAKER, on behalf of himself
14 and all others similarly situated,

15 Plaintiff,

16 v.

17 UNITED PARCEL SERVICE, INC., a
Delaware Corporation, and UNITED
18 PARCEL SERVICE, INC., an Ohio
corporation,

19 Defendants.

Case No. 21-cv-00114-TOR

**STIPULATION AND ORDER
CONCERNING PRODUCTION
OF ELECTRONICALLY
STORED INFORMATION**

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21

1 WHEREAS, counsel for Plaintiff and Defendants (collectively, the
2 “Parties,” and each, a “Party”) have met and conferred regarding potential
3 discovery of electronically stored information (“ESI”);

4 WHEREAS, the Parties have reached agreement on certain issues
5 regarding such discovery;

6 WHEREAS, without waiver of any objections to any discovery that
7 has been served or might be served in the future by any Party, the Parties now enter
8 into this Stipulation and [Proposed] Order Concerning Production of Electronically
9 Stored Information (“Order”) reflecting their agreement;

10 IT IS HEREBY ORDERED that:

11 1. All Parties are bound by and subject to the terms of this Order.

12 2. Definitions.

13 a. “Discovery Material” is defined as all products of discovery
14 and all information derived there from, including, but not limited to documents,
15 objects and things, deposition testimony, interrogatory/request for admission
16 responses, and any copies, excerpts or summaries thereof, produced by any Party
17 in the above-captioned matter.

18 b. Plaintiff and Defendants, as well as legal counsel, are referred
19 to as the “Parties” solely for the purposes of this Protocol.

20 3. Cooperation. The Parties shall conduct discovery in a cooperative
21 manner, including, without limitation, by reasonably drafting discovery requests

1 and responses in accordance with Fed R. Civ. P. 1 and 26(g)(1); and producing ESI
2 in accordance with Fed R. Civ. P. 34; and by meeting and conferring in good faith
3 on topics such as identification of custodians of relevant ESI, potentially relevant
4 data sources, search methodologies, and such other issues as may arise during the
5 course of discovery.

6 4. Search Methodology. The Parties may employ one or more search
7 methodologies, including electronic search and retrieval technologies, to identify
8 potentially relevant ESI. The Parties will meet and confer and attempt in good faith
9 to reach agreement regarding the method of searching and, if applicable, the words,
10 terms, and phrases to be searched; and the custodians and non-custodial sources
11 from whom ESI will be collected and searched.

12 5. Deduplication. The Parties shall make reasonable efforts to
13 deduplicate ESI. ESI shall be deduplicated horizontally across custodians. ESI
14 will be considered duplicative if it has the same content including metadata. For
15 example, duplicates would include copies of the same electronic file saved on the
16 local hard drives and/or network shared drives of multiple custodians, even if
17 different instances of the file reflect different dates created.

18 6. Email Threading. In order to reduce the volume of entirely
19 duplicative content within email threads, the Parties may utilize “email thread
20 suppression.” As used in this agreement, email thread suppression means reducing
21 duplicative production of email threads by producing the most recent email

1 containing the thread of emails, as well as all attachments within the thread, and
2 excluding emails constituting exact duplicates of emails within the produced string.
3 For purposes of this paragraph, only email messages in which the parent document,
4 senders and recipients, and all attachments are exactly the same will be considered
5 duplicates. In the event of an email is withheld on privilege grounds, all members
6 of the thread must be reviewed independently for privilege and logged as
7 applicable.

8 7. Privilege Logs And Redaction. If utilizing email threading, an email
9 thread for which a Party claims a privilege may be logged in a single entry. The
10 Parties agree that the following documents need not be included on a privilege log:

11 a. Communications between the Parties and counsel (including
12 internal communications within a law firm or a legal
13 department of a corporation) on and after the filing of this
14 lawsuit and before the lawsuit in anticipation of litigation
15 regarding the litigation or litigation strategy.

16 b. Work product created by or for trial counsel in this matter after
17 commencement of this action.

18 8. Production Format For ESI.

19 a. General Provisions. Unless the Parties agree to a different
20 format, documents should be produced with TIFF images and named according to
21 the Bates number of the corresponding TIFF image. Each *.tiff file should be

1 assigned a unique name matching the Bates number of the corresponding image.
2 The Bates number should be consistent across the production, contain no special
3 characters, and be numerically sequential within a given document. Attachments
4 to documents should be assigned Bates numbers that directly follow in sequential
5 order the Bates numbers on the documents to which they were attached. If a Bates
6 number or set of Bates numbers is skipped, the skipped number or set of numbers
7 should be noted, for example with a placeholder. All images should be provided in
8 single-page, Group IV TIFF with a resolution of 300 DPI. Bates numbers and
9 confidentiality designations should be electronically branded on each produced
10 *.tiff image. These TIFF images should be provided in a separate folder and the
11 number of TIFF files per folder should be limited to 1,000 files.

12 b. Document Text. All unredacted documents should be provided
13 with complete document-level extracted text files. In the event a document
14 contains text which is to be redacted, OCR text files should be provided for any
15 un-redacted portions of the documents. Document-level OCR text files should be
16 provided for any unredacted portions of redacted documents and for all hard copy
17 scanned documents. The extracted full text and/or OCR text for all deliverables
18 should be in separate document-level TXT files. These TXT files may either be
19 provided in a separate folder or included in the same folder as their corresponding
20 images. The number of TXT files per folder should be limited to 1,000 files.

1 c. Parent-Child Relationships. For email collections, if
2 responsive, the parent-child relationships (the association between emails and
3 attachments) should be preserved and produced as full families except when
4 withheld on privilege grounds or when production as full families is precluded by
5 technical or processing issues. If any one member of a family is responsive, the
6 entire family shall be produced. Email attachments should be consecutively
7 produced with the parent email record.

8 d. Dynamic Fields. Documents with dynamic fields for file
9 names, dates, and times will be processed to show the field code (*e.g.*,
10 “[FILENAME]” or “[AUTODATE]”), rather than the values for such fields
11 existing at the time the file is processed.

12 e. Non-redacted Word Processing Files. All word processing
13 files, including without limitation Microsoft Word files, that do not require
14 redactions, will be produced as *.tiff images showing track changes and
15 comments. Upon a showing of reasonable and particular need, a producing party
16 shall produce a native version of requested files.

17 f. Non-redacted Spreadsheet Files. Spreadsheet files, including
18 without limitation Microsoft Excel files, that do not require redactions will be
19 produced as native files showing comments and similar data. Additionally a Bates-
20 stamped *.tiff placeholder matching the Bates number of the native file, must be
21 included in the production and reflected in the image load file.

1 g. Presentation Files. Presentation files, including without
2 limitation Microsoft PowerPoint files, will be produced as native files showing
3 comments, hidden slides, speakers' notes, and similar data. A UNC file path must
4 be included in the ESI load file. Additionally a bates-stamped *.tiff placeholder
5 matching the bates number of the native file, must be included in the production
6 and reflected in the image load file. The Parties will meet and confer regarding
7 production of presentation files with alternate default settings.

8 h. Collaboration Tools. The Parties will meet and confer to
9 regarding the production format of unstructured communication and collaboration
10 tool data.

11 i. Embedded Files. Embedded files and internally linked files are
12 produced as independent document records. Embedded files should be assigned
13 Bates numbers that directly follow the Bates numbers on the documents within
14 which they are embedded.

15 j. Structured Data. If responding to a discovery request requires
16 production of structured data, the producing Party may comply with the discovery
17 request by generating a report in a reasonably usable and exportable electronic
18 format (for example, .xls or .csv format).

19 k. Time Zone. Unless otherwise agreed, all dynamic date and
20 time fields, where such fields are processed to contain a value, and all metadata
21 pertaining to dates and times will be standardized to Pacific Time. The Parties

1 understand and acknowledge that such standardization affects only dynamic fields
2 and metadata values and does not affect, among other things, dates and times that
3 are hardcoded text within a file. Dates and times that are hard-coded text within a
4 file (for example, in an email thread, dates and times of earlier messages that were
5 converted to body text when subsequently replied to or forwarded; and in any file
6 type, dates and times that are typed as such by users) will be produced as part of
7 the document text in accordance with Concordance and Summation formats,
8 below.

9 l. Bates Numbering. Files will be named according to the Bates
10 number of the corresponding *.tiff image. The Bates number will:

- 11 i. be consistent across the production;
- 12 ii. contain no special characters; and
- 13 iii. be numerically sequential within a given document.

14 Attachments to documents will be assigned Bates numbers that
15 directly follow the Bates numbers on the documents to which they were attached.
16 If a Bates number or set of Bates numbers is skipped, the skipped number or set of
17 numbers will be noted. In addition, wherever possible, each *.tiff image will have
18 its assigned Bates number electronically “burned” onto the image.

19 m. Load File Formats. ESI will be produced in standard
20 Concordance load file format and an image file that is in .OPT format.

n. Metadata to be Produced. Metadata to be produced: The following metadata fields should be produced for each document to the extent that such information is reasonably accessible at the time of collection and processing, except that if a field contains privileged information, that privileged information may be redacted and noted in a corresponding privilege log. All requests should be read to include a request for all metadata associated with all documents responsive to the request.

FIELD NAME	DESCRIPTION	CATEGORY
BEGDOC	Starting Bates	Hardcopy, edoc, email and attachment
ENDDOC	Ending Bates	Hardcopy, edoc, email and attachment
CUSTODIAN	Custodial or non-custodial source(s) from which the document was collected	Hardcopy (if coded), edoc, email and attachment (populated through processing)
ALL CUSTODIANS	Custodial source(s) from which document was collected but subsequently suppressed as a duplicate during processing.	Edoc, email and attachment (populated through processing)
FAMILYIDOR ATTACHID	Family (Range of Bates related documents (i.e., email & attachment) - this field will be populated for all records in the family), and will distinguish parent documents from attachments.	Hard copy, edoc, emails and attachments (populated through processing)

FIELD NAME	DESCRIPTION	CATEGORY
PRPERTIES OR RCRDTYPE	Record type – examples include “email,” “attachment,” “edoc,” or “hardcopy.”	Populated through processing
FROM	Email Author	Emails (populated through processing)
TO	Recipient	Emails (populated through processing)
CC	CC field - In the event of emails	Emails (populated through processing)
BCC	Bcc field - in the event of emails	Emails (populated through processing)
DOCTITLE	Document Title/name/subject of the original native file as it existed at the time of collection.	Hardcopy (if coded), edoc (including email) or attachment (populated through processing)
DOCDATE	Document Date/Date Sent, format MM/DD/YYYY, this is the SORT_DATE field, so populate across families	Email and Attachments
DATESENT	Email Sent Date, format MM/DD/YYYY	Emails (populated through processing)
TIMESENT	Time sent, format 00:00:00 AM/PM	Emails (populated through processing)
DATECREATED	Date first created, format MM/DD/YYYY	Edoc or attachment (populated through processing)

FIELD NAME	DESCRIPTION	CATEGORY
DATESVD	Date last saved/modified, format MM/DD/YYYY	Edoc or attachment (populated through processing)
TIMESVD	Time saved, format 00:00:00 AM/PM	(populated through processing)
PAGECOUNT	Document page count	Edoc or attachment (populated through processing)
APPLICAT	Application used to open the file (Word, Powerpoint, Adobe, Excel, Explorer, Quicken, etc.)	Electronic files and/or emails, attachments (populated through processing)
FOLDERID OR ORIGFOLDERPATH OR FILEPATH	File path/folder structure of original native file as it existed at the time of collection. i.e. path of email in mailbox (populate for email attachments also); filepath of edocs or scanned documents (if requested)	Electronic files and/or emails, attachments (populated through processing)

FIELD NAME	DESCRIPTION	CATEGORY
ALL FILEPATHS	File path/folder structure of original native file as it existed at the time of collection but subsequently removed as a duplicate. i.e. path of email in mailbox (populate for email attachments also); filepath of edocs or scanned documents (if requested) when duplicate copies were suppressed during processing.	Electronic files and/or emails, attachments (populated through processing).
DOCLINK or NATIVEFILE	Active link reflecting current filepath back to the native file	Electronic files and/or emails, attachments (populated through processing <u>and only provided if receiving native files.</u>)
FILEEXTEN	In the event of attachments or emails, this will enable us to search by document type. Sample contents: <i>PST, MSG, PDF, DOC, PPT, HTM</i> , etc.	Electronic files and/or emails, attachments (populated through processing)
FILESIZE	Numerical file size, in bytes, of any natively-produced documents.	Electronic files and/or edocs (populated through processing)
CONFIDENTIALITY	Confidentiality Designation	All files and documents, as applicable.

FIELD NAME	DESCRIPTION	CATEGORY
AUTHOR	In the event of attachments, this field contains the 'author' of the document	For Hard Copy documents (if coded) or electronic files and/or attachments (populated through processing)
HASH	MD5 Hash value for de-dupe	Electronic files and/or attachments (populated through processing)

9. Production Format for Hard Copy Documents. Hard copy documents will be scanned and processed as *.tiff images with OCR. To the extent this production format is not feasible or causes the producing Party undue burden, the Parties agree to meet and confer to discuss the different form of production.

10. Encryption. To maximize the security of information in transit, any media on which documents are produced may be encrypted by the producing Party. In such cases, the producing Party shall transmit the encryption key or password to the requesting Party, under separate cover, contemporaneously with sending the encrypted media.

11. Costs. The Parties agree each Party shall bear the cost of its own production. In the event, however, a Party requests the production of cumulative or repetitive information or information that otherwise imposes an undue burden, or is from a source that is not reasonably accessible due to undue burden or cost, the producing Party may object. Upon objection, the Parties shall work in good faith to resolve the issue, for instance by producing samples or summaries of such

1 documents. In the event the Parties are unable to resolve their differences, the
2 Parties may proceed consistent with the Federal Rules of Civil Procedure,
3 including Rule 26(b)(2), and any applicable Local Rules.

4 12. “Meet and Confer” Obligations; Motions to Compel and/or Motion
5 for Protective Order. If any formatting requirements or other specifications agreed
6 to in this Protocol are later determined by the producing Party to be infeasible,
7 unduly burdensome, or unduly costly, the Parties shall meet and confer to resolve
8 any disagreements. Further, the Parties will not file any motion to compel
9 compliance with, or enforcement of, this Protocol, or a motion for a protective
10 order, until their “meet and confer” efforts have been satisfied under any applicable
11 rules.

12 13. No Effect on Discovery or Admissibility. This Protocol does not
13 address, limit, or determine the relevance, responsiveness, or admissibility of ESI.
14 Nothing in this Protocol shall be construed to affect the admissibility of any
15 document or data. All objections to the admissibility of any document or data are
16 preserved and may be asserted at any time.

17 14. Protective Order. Nothing in this Protocol shall be deemed to limit,
18 modify, or override any provision of a confidentiality or protective order signed by
19 the Parties and entered by the Court in this matter. In the event of any conflict
20 between this Protocol and an entered protective order, the provisions of the latter
21 shall govern.

15. Applicability To Previously Produced Documents. This Protocol does not apply to documents either party has previously produced. For the avoidance of doubt, nothing in this Protocol requires either party to reproduce documents that the party has previously produced to comply with this Protocol.

Dated and entered this 15th day of December 2023.

BY THE COURT:



Thomas O. Rice
HON. THOMAS O. RICE

APPROVED:

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